STATE OF MICHIGAN

COURT OF APPEALS

SARAH MIZE and CHARLES MIZE, JR.,

Plaintiffs-Appellants,

v

VILLAGE ENTERPRISES, L.L.C., d/b/a BAVARIAN VILLAGE ON THE LAKE AND INDEPENDENCE MANAGEMENT CORPORATION,

Defendant-Appellee.

UNPUBLISHED
June 23, 2005

No. 253473
Oakland Circuit Court
LC No. 2002-044530-NO

Before: Gage, P.J., and Cavanagh and Griffin, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiffs brought this action against defendant, their landlord, after plaintiff Sarah Mize was injured on May 15, 2001, when she fell down some basement stairs at the townhouse apartment plaintiffs were leasing. Plaintiffs allege that the fall was caused because of a broken handrail and loose carpeting on the stairs. The trial court granted defendant's motion for summary disposition, concluding that there was no issue of material fact that defendant did not have notice of the condition of the carpeting and that any defect in the handrail was repaired before Sarah Mize fell.

Plaintiffs argue that the trial court's ruling was based upon inaccuracies and misstatements of fact, that there is at least a question of material fact concerning whether defendant had notice of the two defective conditions that caused or contributed to Sarah Mize's fall, and that the trial court erred in relying on the testimony of defendant's apartment manager and maintenance person, Thomas Ingram. We disagree.

A trial court's grant of summary disposition is reviewed de novo to determine whether the prevailing party was entitled to judgment as a matter of law. *Allen v Keating*, 205 Mich App 560, 562; 517 NW2d 830 (1994). Defendant moved for summary disposition under both MCR 2.116(C)(8) and (C)(10). Although the trial court did not specify under which subrule it granted defendant's motion, because the court considered matters beyond the pleadings, MCR 2.116(C)(10) is the applicable subrule to consider. When reviewing a motion under MCR

2.116(C)(10), this Court must examine the documentary evidence submitted by the parties and, drawing all reasonable inferences in favor of the nonmoving party, determine whether a genuine issue of material fact exists. *Quinto v Cross & Peters Co*, 451 Mich 358, 361-362; 547 NW2d 314 (1996). A question of fact exists when reasonable minds could differ on the conclusions to be drawn from the evidence. *Glittenberg v Doughboy Recreational Industries (On Rehearing)*, 441 Mich 379, 398-399; 491 NW2d 208 (1992).

Residential landlords owe their tenants a common-law duty, enforceable in tort, to avoid negligent conduct. *Woodbury v Bruckner (On Remand)*, 248 Mich App 684, 695; 650 NW2d 343 (2001), remanded on other grounds 467 Mich 922 (2002). Under MCL 554.139(1)(b), the scope of a landlord's obligation includes the duty "[t]o keep the premises in reasonable repair during the term of the lease . . . ." *Id.* at 695-696. The landlord's duty to repair extends to "all defects of which he knew or should have known." *Raatikka v Jones*, 81 Mich App 428, 430; 265 NW2d 360 (1978). Consistent with this duty, the parties' lease agreement requires defendant "to maintain the apartment in reasonable repair . . . provided that the Residents promptly notify the Owner of any condition in the Apartment which is in need of repair." Thus, while a landlord does *not* have a duty "to inspect the premises on a regular basis to determine if any defects exist," he *has* a duty "to repair any defects brought to his attention by the tenant or by his casual inspection of the premises." *Id*. at 431.

It is undisputed that plaintiffs sent defendant a letter, dated March 8, 2001, notifying defendant that the handrail on the basement stairs was broken. Thomas Ingram testified in his deposition that he repaired the handrail and explained how he did so by attaching wood blocks to the wall, but did not recall when he performed the repairs. Plaintiffs concede that the handrail was repaired, but contend that it was not fixed until *after* Sarah Mize fell. Plaintiffs maintain that, at a minimum, there is a genuine issue of material fact whether the handrail was repaired before or after Sarah Mize fell. We disagree.

Plaintiffs took photographs of the handrail both before and after Sarah Mize fell. The photo taken before the fall shows the handrail without the newly attached wooden blocks, whereas the photo taken after the fall shows the handrail with the wooden blocks attached. Additionally, Ingram testified that when he went to plaintiffs' apartment after the fall to give plaintiffs an incident report, plaintiff Charles Mize would not permit him to enter and advised him that any further communications would be through their attorney. Ingram maintained that he did not reenter plaintiffs' apartment until after plaintiffs moved out at the expiration of their lease, at which time the handrail was still properly installed, on the wooden blocks. Plaintiffs do not dispute Ingram's testimony that, after the accident, he was not allowed access into the apartment before plaintiffs moved out. In light of this, and because the picture taken after the fall clearly shows that the wooden blocks had already been installed to secure the handrail, there was no genuine issue of material fact that the handrail was repaired before Sarah Mize fell.

As plaintiffs argue, however, defendant could still be liable if the handrail repair was negligently performed and proximately caused Sarah Mize's fall. But plaintiffs do not claim that the handrail separated from the wooden blocks during the fall, or that the wooden blocks separated from the wall, nor do their pictures show this. Rather, while plaintiffs testified that the handrail separated from the wall during the accident, they maintained that, at that time, the wooden blocks had not yet been installed. As previously discussed, however, the evidence

establishes that the wooden blocks were installed before the fall. Therefore, the trial court properly granted defendant's motion for summary disposition with respect to this issue.

With regard to the carpeting, plaintiffs' March 8, 2001, letter appears to list "[s]tairs - [b]oth - [p]oor carpet installation" as one of the items they claimed was in need of repair. According to Ingram, however, when he asked Charles Mize about that item, Mize showed him only the stairs to the second floor and indicated that he did not like the way the carpet was cut to the stringers. Ingram believed that the complaint was purely aesthetic and told Mize there was nothing wrong with the installation of the carpeting, so no repair was performed. At his deposition, Charles Mize did not dispute Ingram's testimony, but claimed that he did not recall if that item referred to the "bath or both stairwells."[1] But both plaintiffs also testified that, until the accident occurred, neither had ever noticed that the carpeting was separating from the basement stairs. Ingram similarly testified that he had used the basement stairs several times and never noticed that the carpeting was coming loose. While plaintiffs submitted pictures showing that the carpeting was partially detached from the stairs, Charles Mize admitted that he set up the pictures after the fall by pulling on the carpeting.[2]

In sum, because plaintiffs admitted that they, themselves, did not know that the carpeting on the basement stairs was separating until after the fall, there was no genuine issue of material fact that defendant did not have notice of this alleged condition before Sarah Mize's fall.

Accordingly, the trial court properly granted summary disposition to defendant.[3]

Affirmed.

/s/ Mark J. Cavanagh
/s/ Richard Allen Griffin

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[1] As argued by plaintiffs, whether the steps were cracked or broken is a separate issue unrelated to Sarah Mize's fall and, therefore, immaterial for purposes of summary disposition.

[2] It is apparent, therefore, that the pictures do not accurately represent the condition of the carpeting either before or after the accident.

[3] In light of this disposition, we need not reach defendant's argument that it could not be liable under a premises liability theory because it did not have possession and control of the premises.